WASHINGTON STATE UNIVERSITY

May 19, 2006

State of Washington
Department of Ecology
Olympia, WA 98504-7600

RE: Comments Re: Draft Phase II Permit for Eastern Washington, Stormwater Discharge Permit

This letter is submitted in response to your Department's request for review and comments on the Draft Phase II Permit for Eastern Washington, Stormwater Discharge Permit. Washington State University has reviewed the Draft Permit and requests that the Department of Ecology remove WSU and the City of Pullman from the Draft Permit for the reasons stated below.

We have reviewed the regulatory criteria for inclusion of small cities like Pullman and secondary permittees like WSU within the Draft Permit. Our review has concluded that the criteria have not been satisfied. The topography and soil in this area, the agricultural practices completely surrounding Pullman and WSU, and ongoing efforts to improve storm water practices, demonstrate that there is no scientific basis, little, if any, environmental benefit, and no cost/benefit analysis that would justify including WSU and Pullman in the Draft Permit.

The draft permit language states that Ecology is to make the determination (of whether a city will be a "regulated small MS4") "on a case-by-case basis with the assistance from the jurisdictions involved." Specific comments to each of the criteria are listed below.

Based on the information available on the Ecology web site, WSU cannot determine which criteria Ecology used in tentatively determining that Pullman should be a regulated small MS4: the criteria found in NPDES Phase II Designation Criteria for Small Municipal Separate Storm Sewer Systems, Proposed Draft, 7/27/04, or Draft

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Phase II Permit for Eastern Washington, Formal Public Comment Draft Fact Sheet, 3/22/06. As such, the following comments address both sets of criteria.

Criteria 1: Does the MS4 discharge stormwater to impaired or sensitive waters (as compared with the waters outside the jurisdictional (city) boundaries)?

"Impaired waters" are defined as those identified on the Clean Water Act Section 303(d) list. Water bodies can be and are listed based on old and incomplete data. In the case of the South Fork Palouse River (SFPR), it was listed based on data ranging from 1987 to 2003 with the majority of data being over 10 years old.

Your Department has announced plans to conduct a Total Maximum Daily Load (TMDL) comprehensive drainage basin study beginning this summer. This study will be completed in 2009, and is intended to provide the scientific data needed to make the determination required in Criteria 1. As recently as Wednesday of this week, in a public meeting held by your department in Pullman, DOE reaffirmed that the TMDL study is intended to provide the science to determine the flow and contaminant sources for the SFPR, Paradise Creek and other tributaries. Until the study is done, however, there is not sufficient scientific analysis to make a determination that the City of Pullman/WSU stormwater is discharging to "impaired waters" compared with waters outside of Pullman, and that the City of Pullman / WSU's stormwater is a "contributing source of pollutants" of interest to the SFPR.

The SFPR also does not constitute "sensitive waters" as that term is described in the criteria. "Sensitive waters" are described at page 3 of the NPDES Phase II Designation Criteria Proposed Draft, 7/24/04, but not defined in the glossary. The description is expressly not binding but if applied as written clearly does not apply to the SFPR. Similarly, the term is not defined in the Draft Phase II Permit for Eastern Washington or the Formal Public Comment Draft Fact Sheet. A definition is needed in order to evaluate whether it applies to the SFPR. Until the term is defined or DOE states that the SFPF is not "sensitive waters" WSU cannot understand and fully comment on and evaluate the application of these criteria

There are no or insufficient scientific facts at the present time upon which DOE can make a determination that the portions of the SFPR to which the City of Pullman/WSU stormwater is discharged are impaired or sensitive waters as compared to waters outside of Pullman. Therefore, until the TMDL study is complete, it would be arbitrary for the Department of Ecology to determine that Criteria 1 is satisfied with respect to the City of Pullman and WSU stormwater discharges.

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Criteria 2 (Criteria 5 in the Formal Public Comment Draft Fact Sheet): Is the MS4 a significant contributor of pollutants to waters of the United States?

Criteria 2 states that Ecology will determine whether an MS4 is a significant contributor of pollutants to waters of the United States using the "best available science and readily available information," and includes four specific types of information.

The first three types of information are:

1. Water quality monitoring data
2. Landscape metrics such as total impervious surface area, road network density, or number of stream crossings by roads
3. Quantification of the vehicular traffic in the MS4 at levels that would correspond to a high pollutant loading in stormwater discharges

As with Criteria 1, there is not enough available scientific information (e.g. TMDL analysis) on the South Fork Palouse River to determine if Pullman is a significant contributor of pollutants based on the first three types of information listed. To our knowledge the Department of Ecology has not yet conducted the studies that would produce the information necessary to draw a conclusion about any of the first three criteria.

The fourth type of information listed refers to "other indications of increased potential for stormwater pollutant loading" and specifically addresses large non-resident population commuters and university students. WSU, unlike many Universities, has a relatively small number of students who commute by car either from outside Pullman or within Pullman. Rather than being a "commuter college", WSU-Pullman is very much a "residential University". 35% of all undergraduates live in campus housing which is a very high percentage compared with other large public Universities, and many other students live within walking distance of the campus. In addition, the Pullman transit system which is partially funded by WSU has a high number of student riders, and is one of the best transit systems in the state. This further reduces the number of commuter vehicles that could have impact on stormwater pollutant loading.

The Department of Ecology "Draft Fact Sheet" for designation criteria states that "this determination (*of regulated MS4 status*) will be based only on the presence of impaired or sensitive waters as compared with jurisdictional boundaries." All parties who are familiar with the special circumstances regarding the topography and soils surrounding the Pullman area, including DOE staff, have recognized the improbability

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of the City of Pullman or WSU being able to do anything significant to impact the quality of the SFPR with respect to stormwater discharges other than what is already being done. If this is the "only" criteria as stated, it is not satisfied in the case of Pullman and WSU.

Regional topography, soil types, and agricultural practices are by far the greatest contributor to the water quality of the SFPR. These factors are not within the control of Pullman or WSU and exist almost exclusively before the SFPR enters Pullman and after it leaves Pullman. The TMDL study will no doubt document that the stormwater discharges in Pullman/WSU do not contribute materially to the quality of the water in the SFPR.

Criteria #2 is not met for WSU and Pullman.

Criteria #3: Does the MS4 serve a substantial population or area?

Pullman's population (including WSU) is currently estimated at approximately 27,000, more than 18,000 of whom are students attending WSU and most of whom do not reside in Pullman all year. There has been no showing that Pullman serves a substantial population or area. Additionally, there is inadequate evidence to conclude that Pullman has a high population density, high growth, or high growth potential.

Criteria #4: Is the MS4 contiguously located to an Urbanized Area?

The City of Pullman is not interconnected with a regulated MS4 or otherwise contiguous to an Urbanized Area.

Section B: Additional Designation Criterion

Section B criteria is also dependent on the City of Pullman being interconnected with a MS4 that is regulated by the NPDES stormwater program. Since it is not so interconnected, it cannot be designated as a "regulated small MS4" under "Section B. Additional Designation Criterion".

In summary, none of the proposed DOE Criteria would justify or cause Pullman and WSU to be included in the Phase 2 Stormwater Permit for Eastern Washington. WSU and Pullman should be removed from the 'bubble city' list for the Phase 2 Stormwater Permit.

Other Factors That Should Be Considered

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WSU has taken significant steps to improve our overall stormwater management. WSU cleans its stormwater catch basins annually and is developing plans for stormwater pipe cleaning every 3 years. WSU has begun signing all storm drain inlets with 'No Dumping, Drains to River' badges and is approximately 25% complete. WSU's Environmental Health and Safety department is developing a Stormwater Fact Sheet Pamphlet available on its website. WSU complies with all current state and federal construction stormwater management requirements; and WSU incorporates stormwater management features into the design of capital projects on campus. WSU would be happy to meet with Department of Ecology representatives to evaluate our stormwater discharge policies and practices. If you find them lacking to any significant degree, we would be also be willing to address with you steps to improve them.

The unique nature of the geology of the Palouse region requires special consideration. Steep slopes throughout the rolling hills of the Palouse and local soils that are highly erodable are reflected in the turbid runoff from the largely agricultural land use throughout the Palouse. Further, the impermeability of the clay sub-soils does not allow the use of many typical stormwater management practices. For example, because of the impermeable soils drywell infiltration or pond retention and infiltration practices are not feasible stormwater management solutions in this area.

Additionally, regional farming practices are excluded from permit compliance. These practices which are allowed by the Department of Ecology are a major source of pollutants that enter the SFPR. WSU is not advocating that the Department of Ecology change its regulation of farming practices. However, because of the topography, soils, and farming practices the substantial cost that would be placed on WSU to comply with Permit requirements would achieve little, if any, benefit to the environment.

WSU depends on student tuition, grants and contracts, and state funds to operate. Based on the chart provided in the Draft Permit for small cities, the cost to Pullman to comply with the Permit would be well over one million dollars. No economic impact statement was done by the Department of Ecology to estimate the financial impact on secondary permittees, but given the administrative costs imposed on permittees, the cost for WSU would probably be similar. Unlike the City, WSU does not have the option to impose a tax to pay for these costs. Nor have we been funded by the legislature for these costs. We are also not aware that the Department of Ecology has funding it could provide to us.

Even if there was a funding source, WSU seriously questions the expenditure of public funds in this circumstance. The projected costs far exceed any possible benefit to the

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environment by imposing permit requirements for stormwater discharge on Pullman and WSU. Inclusion of Pullman and WSU in the Permit ignores the reality of our local topography, geology, and location within an almost exclusively agricultural area.

If a permit is required by your Department, its water quality goals would be largely unattainable. The obvious outcome from the first five years of the Phase 2 permit implementation would be stormwater quality and stormwater quantity discharge standards that Pullman and WSU will almost certainly not be able to meet. The Department of Ecology's local staff recognize the realities of this situation and we ask that you do so at the state level as well.

In summary, the criteria for including the City of Pullman and WSU in the Phase 2 Stormwater Permit for Eastern Washington have not been met. WSU requests that the Department of Ecology re-evaluate the applicability of the Phase 2 permit to Pullman and WSU and remove both entities from the permit requirements.

Thank you for the opportunity to comment on the draft regulation.

Sincerely

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Senior Associate Vice President for Business Affairs

cc: John Sherman, City Supervisor, City of Pullman
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